

Supplemental Letter of Findings: 04-20200377
Gross Retail and Use Tax
For the Years 2014, 2015, and 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Indiana Aircraft Service Provider established that it was entitled to an adjustment of an audit sales and use tax assessment; Service Provider established that it was not subject to sales or use tax on the acquisition or sale of aircraft service packages and that any ancillary property acquired or transferred was also exempt when sold to one of its customers.

ISSUE

I. Gross Retail and Use Tax - Exempt Transactions.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5-46; IC § 6-8.1-5-1; IC § 6-8.1-10-1; *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Letter of Findings 04-20200377 (April 21, 2021).

Taxpayer argues that it was not required to pay sales tax or self-assess use tax on the purchase of equipment, supplies, and services that were later resold to Taxpayer's own clients.

STATEMENT OF FACTS

Taxpayer is an Indiana aircraft dealer, repair facility, and aviation fuel station. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records and tax returns. The Department's analysis was based on a "representative sample of purchase[] invoices" because of the "volume of purchases made during the audit period." The audit report explains the results:

During the review of the sample period's invoices, exceptions were discovered. These exceptions were taxable purchases [for] which sales tax was not paid at the time of the purchase, and for which use tax was not accrued upon.

The audit assessed additional sales tax on Taxpayer's purchases from a number of vendors. The audit also assessed use tax on purchases of items for which no sales tax was paid and for which Taxpayer did not self-assess use tax.

The Department's audit resulted in an assessment of additional sales/use tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by video conference during which Taxpayer's representatives explained the basis for the protest. A Letter of Findings ("LOF") was issued April 21, 2021, in which Taxpayer's protest was sustained in part and denied in part.

Taxpayer disagreed with that portion of the LOF denying its protest and submitted a request for a rehearing. The request was granted, a supplemental hearing was conducted, and this Supplemental Letter of Findings results.

I. Gross Retail and Use Tax - Exempt Transactions.

DISCUSSION

The issue is whether Taxpayer has provided documentation and clarification justifying an adjustment to Taxpayer's sales and use tax assessment because the transactions fall within one of three specific exemptions.

A. Taxpayer's Burden of Proof and Indiana's Sales & Use Tax.

As a threshold issue, tax assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct; the taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(c).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Indiana also imposes a complementary excise tax called "use tax." In this context, "use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.* at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a). A taxable retail transaction occurs when; (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), IC § 6-2.5-3-2(a).

[45 IAC 2.2-4-2](#) contains a provision exempting the purchase of services from sales tax. [45 IAC 2.2-4-2\(a\)](#) states that, "Professional services, personal services, and services in respect to property not owned by the person rendering such services are not transactions of a retail merchant constituting selling at retail and are not subject to gross retail tax." However, "Where, in conjunction with rendering professional services . . . the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail" *Id.*

B. Original Letter of Findings.

Taxpayer argues the Department erred in addressing its purchase of an aircraft. Letter of Findings 04-20200377 (April 21, 2021) ("LOF"), 20210707-Ind. Reg. -045210236NRA states:

Taxpayer argued that its purchase of an aircraft from "AeroMech" Inc. was exempt from sales tax and use tax on the grounds that the aircraft was purchased for resale. In this instance, the Department must disagree because the aircraft was listed as a depreciable asset as of December 31, 2014.

Taxpayer argues that the LOF is wrong because Taxpayer "did not purchase an aircraft from AeroMech, Inc. who does not sell aircraft." Instead, Taxpayer specifically disputes the tax assessed on non-aircraft purchases from AeroMech denoted as follows:

AMI-15-912; AMI-15-808; AMI-15-790; AMI-15-736; AMI-15-126; AMI-15-032; AMI-15-016; AMI-15-119.

C. Taxpayer's Purchases and Corresponding Sales.

Taxpayer argues that each of these purchases is exempt under one or more of three specific exemptions. As to these first two exemptions, AeroMech sold Taxpayer exempt services or AeroMech sold Taxpayer items which were purchased for resale and then resold. (For reference purposes, "RVSM" stands for "reduced vertical separation minimum"). Publicly available information explains that the "RVSM Data Package contains substantiation of equipment/system performance and continued airworthiness approval." RVSM Approval Process - AeroMech Incorporated, www.aeromechinc.com/rvsm-approval-process (Last visited August 9, 2021).

AMI-15-912 documents a transaction which is represented by an invoice that documents the purchase of an RVSM Contour CFD Analysis for \$1,120. Accompanying that purchase invoice, is an \$1,800 sales invoice to a third-party for RVSM Manuals and RVSM Analysis.

AMI-15-808 documents a transaction which is represented by an invoice that documents the purchase of an RVSM Contour CFD Analysis for \$1,120. Accompanying that purchase invoice, is an \$1,800 sales invoice to a

third-party for RVSM Manuals and RVSM Analysis.

AMI-15-790 documents a transaction for the purchase of RVSM Manuals and RVSM Analysis for \$1,200. Accompanying that purchase invoice, is an \$1,575 sales invoice to a third-party for RVSM Manuals and RVSM Analysis.

AMI-15-736 documents a transaction which documents the purchase of RVSM Manuals and RVSM Analysis for \$1,200. Accompanying that purchase invoice, is an \$1,575 sales invoice to a third-party for RVSM Manuals and RVSM Analysis.

AMI-15-126 documents the purchase of an RVSM Skin Contour Analysis for \$1,120. Accompanying that purchase invoice, is an \$1,800 sales invoice to a third-party for RVSM Manuals and RVSM Analysis.

AMI-15-032 documents a \$1,220 purchase from AeroMech of a RVSM "Skin Contour Analysis." Accompanying that purchase invoice is a sales invoice for a RVSM Analysis priced at \$1,650.

AMI-15-016 documents a \$1,220 purchase from AeroMech of a RVSM "Skin Contour Analysis" for "505-00122." Taxpayer provided a "workorder" for a RVSM Analysis priced at \$1,525.

AMI-15-119 documents a \$16,000 purchase of an "RVSM STC Package" for a Twin Commander Aircraft. Taxpayer then provided its own "workorder" listing the sale of an RVSM STC for \$20,000. Taxpayer lists this particular aircraft - tail number N544GA, model 690D as a "depreciable asset." Taxpayer elsewhere explains that this is the purchase of a "certification which is an exempt service, that was purchased and resold." Taxpayer emphasizes that "[t]his charge is for aircraft certification, not an aircraft." (Taxpayer's emphasis).

D. Aircraft Repair or Refurbishment.

As noted above, Taxpayer relies on the purchase for resale exemption and the fact that the provision of services is not subject to tax. However, Taxpayer also points out that certain of its transactions fall under the "aircraft dealer" exemption found at IC § 6-2.5-5-46. The statute exempts certain transactions between an aircraft dealer, aircraft maintenance facility, aviation fuel supplier and those particular vendors' aircraft customers.

As noted above, Taxpayer is in business as an aircraft dealer, aircraft repair facility, and aviation fuel supplier. Taxpayer cites to IC § 6-2.5-5-46 which provides in relevant part:

(a) Transactions involving tangible personal property (including materials, parts, equipment, and engines) are exempt from the state gross retail tax, if the property is:

- (1) used;
- (2) consumed; or
- (3) installed;

in furtherance of, or in, the repair, maintenance, refurbishment, remodeling, or remanufacturing of an aircraft or an avionics system of an aircraft.

(b) The exemption provided by this section applies to a transaction only if:

- (1) the retail merchant, at the time of the transaction, possesses a valid repair station certificate issued by the Federal Aviation Administration under 14 CFR 145 et seq. or other applicable law or regulation; or
- (2) the:
 - (A) retail merchant has leased a facility at a public use airport for the maintenance of aircraft and meets the public use airport owner's minimum standards for an aircraft maintenance facility; and
 - (B) work is performed by a mechanic who is certified by the Federal Aviation Administration. (Effective July 1, 2014).

Taxpayer supplied a copy of its "Repair Station Certificate" called for in IC § 6-2.5-5-46(b)(1).

It is not entirely clear whether equipment or supplies are contained in the purchases of the AeroMech RVSM STC service packages or if any of those items are incorporated into customers' aircraft; if so, those parts are exempt from tax under IC § 6-2.5-5-46.

As to the eight transactions listed as AMI-15-912; AMI-15-808; AMI-15-790; AMI-15-736; AMI-15-126; AMI-15-032; AMI-15-016; AMI-15-119, Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the Department's assessment of sales or use tax on those specific transactions was incorrect.

Taxpayer's protest is sustained. The cited transactions represent purchases for resale, exempt services, or are exempt pursuant to IC § 6-2.5-5-46.

FINDING

To the extent set out above, Taxpayer's protest is sustained.

September 3, 2021

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